IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.1061 OF 2005

WITH

CIVIL APPLICATION NO.1283 OF 2005

Shama Kiran Deshpande & Ors. ..Appellants.

Vs.

Aditya Sudhir Deshpande ..Respondent.

....

Mr.A.H.Palekar i/b M/s.S.Ashwinikumar & Co. for the Appellants.

CORAM : DR.D.Y.CHANDRACHUD, J.

29th November 2005.

P.C. :

There is no reason to interfere with the well considered order of the Trial Court setting aside the abatement of the suit. The Learned Trial Judge has noted that the Defendant expired on 30th April, 2002 of which intimation was furnished to the Plaintiff's advocate on 17th June, 2002.

Chamber Summons 797 of 2002 was in fact taken out on 26th June, 2002 for bringing the heirs of the Defendant on record. The dismissal of the suit on the ground that it had abated was therefore strictly not correct. Counsel appearing for the Appellants fairly states that he is not aggrieved by the order setting aside the abatement but by the order of the Trial Judge which restores the ad interim relief. It has been submitted that there are subsequent circumstances on the basis of which the Appellants seek to move the Trial Court for vacating the ad interim order. If there is any subsequent change in circumstance, it is always open to the Appellants to move an application under Order 39 Rule 4. In so far as the preliminary issue in regard to the maintainability of the suit before the Trial Court is concerned, it would be open to the Appellants to move the Learned Trial Judge for expeditious disposal thereof. The Learned Trial Judge shall consider any such application and set down the matter considering the exigencies of his own work. The Appeal is dismissed.

In view of the disposal of the Appeal from

Order, the Civil Application is rendered infructuous and is accordingly disposed of.